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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,306

04/08/2008

Lawrence Solomon

ABT-034

2575

64546

7590

12/13/2010

ACCU-BREAK TECHNOLOGIES, INC.

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SUITE 230

PLANTATION, FL 33324

EXAMINER

BARHAM, BETHANY P

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

12/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/598,306	Applicant(s) SOLOMON ET AL.	
	Examiner BETHANY BARHAM	Art Unit 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,2,4,5,8-10,15-22 and 43.
 Claim(s) withdrawn from consideration: 6,11-14,24 and 27-42.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/S. TRAN/
 Primary Examiner, Art Unit 1615

Continuation of 11. does NOT place the application in condition for allowance because: the amendments to the claims will NOT be entered since they change the scope of the independent claim by requiring 2 layers and 3 or more segments, one segment adapted to be broken for dividing the dose prior to administration and height/width limitations, where 2 or more segments, one inactive, and one active were all that was originally required in the independent claim. As such the claims remain rejected over the prior art of record. Applicant argues that '608 does not teach the "IR inactive segment is adapted to be broken for dividing the dose prior to administration". However, as pointed out above the amendments are not being entered and the claims presented on 08/20/10 and rejected over '608 did not require such a limitation. Further Applicant's other arguments with respect to '447 and '608 in view of '447 alone or in combination with '021 and '589 are all directed to the inactive layer being IR and the original claims on 08/20/10 did not require that the inactive layer be comprised of anything only that it not contain drug and that the pharmaceutical portion be immediate release (which is taught in the prior art of record). Applicant also argues that '683 and '447 in view of Pharmaceutical Industry Info and further in view of '021 and '589 does not teach the limitations that will not be entered. The Examiner respectfully points out that previously the height/width requirement was not part of claim 1 and thus not necessary for obviousness. As such the rejections of record are maintained.

Also, Applicant did not refile the terminal disclaimer over IS 7,329,418 and as such it is maintained until a proper TD is filed. However, the terminal disclaimers filed on 11/29/10 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/598267 and 11/569343 have been reviewed and are accepted. The terminal disclaimers have been recorded.